

## **REMARKS/ARGUMENTS**

Applicants respond herein to the Office Action dated September 14, 2009.

Claims 1-4 and 6-12 are pending in the application. Claim 5 has been cancelled.

Claims 1-4, 6-8 and 10 were rejected under 35 USC 103(a) as being unpatentable over Maguire et al. (US 5,913,854) in view of Desinger (US 6,723,094). Claim 9 was rejected under 35 USC 103(a) as being unpatentable over Maguire et al. (US 5,913,854) in view of Desinger (US 6,723,094) and further in view of Pantages et al. (US 6,259,760) and claims 11-12 were rejected under 35 USC 103(a) as being unpatentable over Maguire et al. (US 5,913,854) in view of Desinger (US 6,723,094) and in further view of Crites et al. (3,568,660).

Applicant acknowledges the finality of the Office Action of September 14, 2009 and submits that the above amendments, which simply unify and clarify limitations already present and arguments already made in the application, do not raise any new issues. Accordingly, entry thereof is proper and respectfully requested.

Independent claim 1 (and the claims dependent thereon) contains the limitations of a probe, "...configured with a mechanical strength, rigidity and perforation capability that permits insertion of the shaft into body tissue..." In addition, claim 1 specifies that the probe contains a hollow body that extends from the handle and integrally forms the distal electrode. This integral configuration provides the mechanical strength and rigidity to provide the body tissue with insertion capability and also prevents breakage, upon removal of the probe, without risk of residual material remaining in ablated tissue.

Furthermore, the hollow body which is used as a conduit for cooling fluid provides a support for the proximal electrode and the insulator body which insulates the proximal electrode from the conductive hollow body and the distal electrode. In order to provide such configuration the hollow body is claimed, as being comprised of portions of smaller and larger outside diameter. The larger diameter portion comprising the distal electrode and the smaller diameter portion comprising the support for the insulator or insulating layer and the proximal electrode. Accordingly, the proximal and distal electrodes comprise the outer surface of the shaft and are claimed as being axially separated from each other by the insulator, as well. A utilization described in the application of the claimed device is for tumor ablation with direct perforation of the tumor by the distal electrode for the heated ablation removal of the tumor.

It is submitted that Maguire et al. is an inappropriate reference with respect to the claimed invention. Maguire discloses a flexible ablation catheter for controlled ablation of only surface tissue, such as cardiac tissue with linear ablation electrodes (electrodes arranged along the length of the catheter and specifically not the tip). This electrode positioning and use is particularly for surface ablating of cardiac tissue (see col. 1, lines 17-47 and col. 3, lines 43-54). It is in no way configured for insertion into tissue (all the ablating electrodes 18 are configured as bands around tip portion 10) and the catheter has no “mechanical strength, rigidity (it is described as being flexible) or perforation capability” (note the blunt end of 20) as claimed herein.

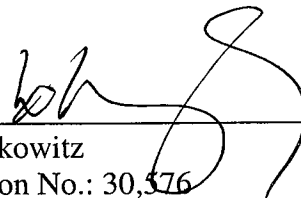
Furthermore, because of the described use with cardiac tissue, Maguire’s catheter would not be modified to have a perforation capability as in the Desinger reference. Maguire also teaches that coagulation effects (col. 1, lines 25-28) are to be avoided with the ablation, which would occur with insertion into tissue as with the claimed device. In direct contrast, Desinger specifically operates to provide the coagulation effect (see abstract). The teachings of Desinger would not be used by one skilled in the art to modify the Maguire device, given the clear teaching in this reference of the ill effects which would occur if the modification suggested in the Office Action were to be adopted.

None of the references, including Desinger (who is an inventor in the present application), discloses, teaches or even suggests using the claimed integral hollow body, which provides strength to the distal electrode for enhanced tissue insertion (and removal) capability, nor the variable diameter portions which permit the structural configuration of the respective electrodes and support provided by the hollow body to the insulator and proximal electrode.

Accordingly, the Examiner is respectfully requested to reconsider the application, allow the claims as amended and pass this case to issue.

THIS CORRESPONDENCE IS BEING  
SUBMITTED ELECTRONICALLY  
THROUGH THE PATENT AND  
TRADEMARK OFFICE EFS FILING  
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Respectfully submitted,



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